

Title	Discovery Sanctions (amend Code of Civil Procedure sections 2023, 2025, 2028, 2030, 2031, 2032, 2033, and 2034)
Summary	Legislation would be sponsored by the Judicial Council to amend sections of the Code of Civil Procedure on civil discovery to explicitly provide that the trial court has the authority to award sanctions in favor of a party who was forced to file a motion to compel discovery even if no opposition to the motion is filed.
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O'Donnell, Committee Counsel, Office of the General Counsel, 415-865-7665, patrick.o'donnell@jud.ca.gov Dan Pone, Senior Attorney, Office of Governmental Affairs, 916-323-3121, daniel.pone@jud.ca.gov
Discussion	<p>The discovery statutes are currently unclear whether courts have the authority to award sanctions in favor of a party who was compelled to file a motion to compel discovery when no opposition to that motion is filed. Courts appear to have such authority. But to clarify this situation, rule 341 of the California Rules of Court was adopted and became effective July 1, 2001. Even so, absent explicit statutory authority, some judges and litigants question whether the courts may award sanctions against a party who fails to file an opposition to a discovery motion.</p> <p>To clarify that sanctions are available in favor of the moving party in these circumstances, the Discovery Act would be amended. Specifically, Code of Civil Procedure section 2023 would be amended along the lines of rule 341 to provide that sanctions may be awarded not only against a party that unsuccessfully opposes a motion, but also one that files no opposition, withdraws opposition to a motion that is granted, or responds to a discovery request after the motion is filed.</p> <p>In addition, the legislation would amend each of the sections of the Discovery Act that contains the ambiguous language that has caused the uncertainty. For example, Code of Civil Procedure section 2028(d) provides:</p> <p>“The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to overrule an objection, unless it finds that</p>

	<p>the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”</p> <p>This legislative proposal would provide that, after the words “unsuccessfully makes or opposes a motion,” the words “or fails to oppose the motion” would be added in the relevant discovery statutes. (See e.g., proposed amended C.C.P., §§ 2025(g), 2028(d), and 2030(k).)</p> <p>The amended statutes would retain the concluding phrase “unless [the court] finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of sanctions unjust.”</p> <p>This legislation is intended to eliminate the ambiguity about the scope of the court’s sanctioning authority when no opposition is filed in response to a motion to compel discovery.</p> <p>A copy of the proposed amendments is attached. Comments are invited on whether the Judicial Council should sponsor this legislation.</p>
	Attachments

LEGISLATIVE PROPOSAL

Code of Civil Procedure sections 2023, 2025, 2028, 2030, 2031, 2032, 2033, and 2034 would be amended to read:

1 **§ 2023.**

2 **(a) * * ***

3 **(b)** To the extent authorized by the section governing any particular discovery
4 method or any other provision of this article, the court, after notice to any affected
5 party, person, or attorney, and after opportunity for hearing, may impose the
6 following sanctions against anyone engaging in conduct that is a misuse of the
7 discovery process.

8 (1) The court may impose a monetary sanction ordering that one engaging in the
9 misuse of the discovery process, or any attorney advising that conduct, or both pay
10 the reasonable expenses, including attorney's fees, incurred by anyone as a result
11 of that conduct. The court may impose this sanction on a party who
12 unsuccessfully opposes a motion under this Article, files no opposition to such a
13 motion, withdraws opposition to a motion that is granted, or responds to the
14 discovery request after the motion is filed and before it is heard. The court may
15 also impose this sanction on one unsuccessfully asserting that another has engaged
16 in the misuse of the discovery process, or on any attorney who advised that
17 assertion, or on both. If a monetary sanction is authorized by any provision of this
18 article, the court shall impose that sanction unless it finds that the one subject to
19 the sanction acted with substantial justification or that other circumstances make
20 the imposition of the sanction unjust.

21 (2)–(5) * * *

22 **(c) * * ***

23
24 **§ 2025.**

25 **(a)–(f) * * ***

26 **(g)** Any party served with a deposition notice that does not comply with
27 subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party
28 promptly serves a written objection specifying that error or irregularity at least
29 three calendar days prior to the date for which the deposition is scheduled, on the
30 party seeking to take the deposition and any other attorney or party on whom the
31 deposition notice was served. If an objection is made three calendar days before
32 the deposition date, the objecting party shall make personal service of that
33 objection pursuant to Section 1011 on the party who gave notice of the deposition.
34 Any deposition taken after the service of a written objection shall not be used
35 against the objecting party under subdivision (u) if the party did not attend the
36 deposition and if the court determines that the objection was a valid one.

1 In addition to serving this written objection, a party may also move for an order
2 staying the taking of the deposition and quashing the deposition notice. This
3 motion shall be accompanied by a declaration stating facts showing a reasonable
4 and good faith attempt at an informal resolution of any issue presented by the
5 motion. The taking of the deposition is stayed pending the determination of this
6 motion.

7
8 The court shall impose a monetary sanction under Section 2023 against any party,
9 person, or attorney who unsuccessfully makes or opposes a motion to quash a
10 deposition notice or fails to oppose the motion, unless it finds that the one subject
11 to the sanction acted with substantial justification or that other circumstances
12 make the imposition of the sanction unjust.

13 **(h) * * ***

14 **(i)** Before, during, or after a deposition, any party, any deponent, or any other
15 affected natural person or organization may promptly move for a protective order.
16 The motion shall be accompanied by a declaration stating facts showing a
17 reasonable and good faith attempt at an information resolution of each issue
18 presented by the motion.

19
20 The court, for good cause shown, may make any order that justice requires to
21 protect any party, deponent, or other natural person or organization from
22 unwarranted annoyance, embarrassment, or oppression, or undue burden and
23 expense. This protective order may include, but is not limited to, one or more of
24 the following directions:

25
26 (1) That the deposition not be taken at all.

27
28 (2) That the deposition be taken at a different time.

29
30 (3) That a video recording of the deposition testimony of a treating or consulting
31 physician or of any expert witness, intended for possible use at trial under
32 paragraph (4) of subdivision (u), be postponed until the moving party has had an
33 adequate opportunity to prepare, by discovery deposition of the deponent, or other
34 means, for cross-examination.

35
36 (4) That the deposition be taken at a place other than that specified in the
37 deposition notice, if it is within a distance permitted by subdivision (e).

38
39 (5) That the deposition be taken only on certain specified terms and conditions.

40
41 (6) That the deponent's testimony be taken by written, instead or oral,
42 examination.

- 1 (7) That the method of discovery be interrogatories to a party instead of an oral
2 deposition.
3
4 (8) That the testimony be recorded in a manner different from that specified in the
5 deposition notice.
6
7 (9) That certain matters not be inquired into.
8
9 (10) That the scope of the examination be limited to certain matters.
10
11 (11) That all or certain of the writings or tangible things designated in the
12 deposition notice not be produced, inspected, or copied.
13
14 (12) That designated persons, other than the parties to the action and their officers
15 and counsel, be excluded from attending the deposition.
16
17 (13) That a trade secret or other confidential research, development, or
18 commercial information not be disclosed or be disclosed only to specified persons
19 or only in a specified way.
20
21 (14) That the parties simultaneously file specified documents enclosed in sealed
22 envelopes to be opened as directed by the court.
23
24 (15) That the deposition be sealed and thereafter opened only on order of the
25 court.
26

27 If the motion for a protective order is denied in whole or in part, the court may
28 order that the deponent provide or permit the discovery against which protection
29 was sought on those terms and conditions that are just.
30

31 The court shall impose a monetary sanction under Section 2023 against any party,
32 person, or attorney who unsuccessfully makes or opposes a motion for a protective
33 order or fails to oppose the motion unless it finds that the one subject to the
34 sanction acted with substantial justification or that other circumstances make the
35 imposition of the sanction unjust.

36 **(j)–(m) * * ***

37 **(n)** The deposition officer may not suspend the taking of testimony without the
38 stipulation of all parties present unless any party attending the deposition
39 including the deponent, demands that the deposition officer suspend taking the
40 testimony to enable that party or deponent to move for a protective order on the
41 ground that that the examination is being conducted in bad faith or in a manner
42 that unreasonably annoys, embarrasses, or oppresses that deponent or party. This
43 motion shall be accompanied by a declaration stating facts showing a reasonable

1 and good faith attempt at an informal resolution of each issue presented by the
2 motion. The court, for good cause shown, may terminate the examination or may
3 limit the scope and manner of taking the deposition as provided in subdivision (i).
4 If the order terminates the examination, the deposition shall not thereafter be
5 resumed, except on order of the court.

6
7 The court shall impose a monetary sanction under Section 2023 against any party,
8 person, or attorney who unsuccessfully makes or opposes a motion for this
9 protective order or fails to oppose the motion, unless it finds that the one subject to
10 the sanction acted with substantial justification or that other circumstances make
11 the imposition of the sanction unjust.

12 (o) If a deponent fails to answer any question or to produce any document or
13 tangible thing under the deponent's control that is specified in the deposition
14 notice or a deposition subpoena, the party seeking discovery may move the court
15 for an order compelling that answer or production. This motion shall be made no
16 later than 60 days after the completion of the record of the deposition, and shall be
17 accompanied by a declaration stating facts showing a reasonable and good faith
18 attempt at an informal resolution of each issue presented by the motion. Notice of
19 this motion shall be given to all parties, and to the deponent either orally at the
20 examination, or by subsequent service in writing. If the notice of the motion is
21 given orally, the deposition officer shall direct the deponent to attend a session of
22 the court at the time specified in the notice. Not less than five days prior to the
23 hearing on this motion, the moving party shall lodge with the court a certified
24 copy of any parts of the stenographic transcript of the deposition that are relevant
25 to the motion. If a deposition is recorded by audio or video technology, the
26 moving party is required to lodge a certified copy of a transcript of any parts of the
27 deposition that are relevant to the motion. If the court determines that the answer
28 or production sought is subject to discovery, it shall order that the answer be given
29 or the production be made on the resumption of the deposition.

30
31 The court shall impose a monetary sanction under Section 2023 against any party,
32 person, or attorney who unsuccessfully makes or opposes a motion to compel
33 answer or production or fails to oppose the motion, unless it finds that the one
34 subject to the sanction acted with substantial justification or that other
35 circumstances make the imposition of the sanction unjust.

36
37 If a deponent fails to obey an order entered under this subdivision, the failure may
38 be considered a contempt of court. In addition, if the disobedient deponent is a
39 party to the action or an officer, director, managing agent, or employee of a party,
40 the court may make those orders that are just against the disobedient party, or
41 against the party with whom the disobedient deponent is affiliated, including the
42 imposition of an issue sanction, an evidence sanction, or a terminating section
43 under Section 2023. In lieu of, or in addition to, this sanction, the court may

1 impose a monetary sanction under Section 2023 against that party deponent or
2 against any party with whom the deponent is affiliated.

3 (p) * * *

4 (q) (1) If the deposition testimony is steno graphically recorded, the deposition officer
5 shall send written notice to the deponent and to all parties attending the deposition
6 when the original transcript of the testimony for each session of the deposition is
7 available for reading, correcting, and signing, unless the deponent and the
8 attending parties agree on the record that the reading, correcting, and signing of
9 the transcript of the testimony will be waived or that the reading, correcting, and
10 signing of a transcript of the testimony will take place after the entire deposition
11 has been concluded or at some other specific time. For 30 days following each
12 notice, unless the attending parties and the deponent agree on the record or
13 otherwise in writing to a longer or shorter time period, the deponent may change
14 the form or the substance of the answer to a question, and may either approve the
15 transcript of the deposition by signing it, or refuse to approve the transcript by not
16 signing it.

17
18 Alternatively, within this same period, the deponent may change the form or the
19 substance of the answer to any question and may approve or refuse to approve the
20 transcript by means of a letter to the deposition officer signed by the deponent
21 which is mailed by certified or registered mail with return receipt requested. A
22 copy of that letter shall be sent by first-class mail to all parties attending the
23 deposition. For good cause shown, the court may shorten the 30-day period for
24 making changes, approving, or refusing to approve the transcript.

25
26 The deposition officer shall indicate on the original of the transcript, if the
27 deponent has not already done so at the office of the deposition officer, any action
28 taken by the deponent and indicate on the original of the transcript, the deponent's
29 approval of, or failure or refusal to approve, the transcript. The deposition
30 officer shall also notify in writing the parties attending the deposition of any
31 changes, which the deponent timely made in person. If the deponent fails or
32 refuses to approve the transcript within the allotted period, the deposition shall be
33 given the same effect as though it had been approved, subject to any changes
34 timely made by the deponent. However, on a seasonable motion to suppress the
35 deposition, accompanied by a declaration stating facts showing a reasonable and
36 good faith attempt at an informal resolution of each issue presented by the motion,
37 the court may determine that the reasons given for the failure or refusal to approve
38 the transcript require rejection of the deposition in whole or in part.

39
40 The court shall impose a monetary sanction under Section 2023 against any party,
41 person, or attorney who unsuccessfully makes or opposes a motion to suppress a
42 deposition or fails to oppose the motion, unless it finds that the one subject to the

1 sanction acted with substantial justification or that other circumstances make the
2 imposition of the sanction unjust.

3
4 (2) If there is no stenographic transcription of the deposition, the deposition officer
5 shall send written notice to the deponent and to all parties attending the deposition
6 that the audio or video recording made by, or at the direction of, any party, is
7 available for review, unless the deponent and all these parties agree on the
8 record to waive the hearing or viewing of the audio or video recording of the
9 testimony. For 30 days following this notice the deponent, either in person or by
10 signed letter to the deposition officer, may change the substance of the answer to
11 any question.

12
13 The deposition officer shall set forth in a writing to accompany the recording any
14 changes made by the deponent, as well as either the deponent's signature
15 identifying the deposition as his or her own, or a statement of the deponent's
16 failure to supply the signature, or to contact the officer within the allotted period.
17 When a deponent fails to contact the officer within the allotted period, or expressly
18 refuses by a signature to identify the deposition as his or her own, the deposition
19 shall be given the same effect as though signed. However, on a reasonable motion
20 to suppress the deposition, accompanied by a declaration stating facts showing a
21 reasonable and good faith attempt at an informal resolution of each issue presented
22 by the motion, the court may determine that the reasons given for the refusal to
23 sign require rejection of the deposition in whole or in part.

24
25 The court shall impose a monetary sanction under Section 2023 against any party,
26 person, or attorney who unsuccessfully makes or opposes a motion to suppress a
27 deposition or fails to oppose a motion, unless it finds that the one subject to the
28 sanction acted with substantial justification or that other circumstances make the
29 imposition of the sanction unjust.

30 (r)–(v) * * *

31
32 **§ 2028.**

33 (a)–(c) * * *

34 (d) (1) A party who objects to the form of any question shall serve a specific
35 objection to that question on all parties entitled to notice of the deposition within
36 15 days after service of the question. A party who fails to timely serve an
37 objection to the form of a question waives it. The objecting party shall promptly
38 move the court to sustain the objection. This motion shall be accompanied by a
39 declaration stating facts showing a reasonable and good faith attempt at an
40 informal resolution of each issue presented by the objection and motion. Unless
41 the court has sustained that objection, the deposition officer shall propound to the
42 deponent that question subject to that objection as to its form.

1 The court shall impose a monetary sanction under Section 2023 against any party,
2 person, or attorney who unsuccessfully makes or opposes a motion to sustain an
3 objection or fails to oppose the motion, unless it finds that the one subject to the
4 sanction acted with substantial justification or that other circumstances make the
5 imposition of the sanction unjust.

6
7 (2) A party who objects to any question on the ground that it calls for information
8 that is privileged or is protected work product under Section 2018 shall serve a
9 specific objection to that question on all parties entitled to notice of the deposition
10 within 15 days after service of the question. A party who fails to timely serve
11 that objection waives it. The party propounding any question to which an
12 objection is made on those grounds may then move the court for an order
13 overruling that objection. This motion shall be accompanied by a declaration
14 stating facts constituting a reasonable and good faith attempt at an informal
15 resolution of each issue presented by the objection and motion. The deposition
16 officer shall not propound to the deponent any question to which a written
17 objection on those grounds has been served unless the court has
18 overruled that objection.

19
20 The court shall impose a monetary sanction under Section 2023 against any party,
21 person, or attorney who unsuccessfully makes or opposes a motion to overrule an
22 objection or fails to oppose the motion, unless it finds that the one subject to the
23 sanction acted with substantial justification or that other circumstances make the
24 imposition of the sanction unjust.

25 (e)–(g) * * *

26
27 **§ 2030.**

28 (a)–(d) * * *

29 (e) When interrogatories have been propounded, the responding party, and any
30 other party or affected natural person or organization may promptly move for a
31 protective order. This motion shall be accompanied by a declaration stating facts
32 showing a reasonable and good faith attempt at an informal resolution of each
33 issue presented by the motion.

34
35 The court, for good cause shown, may make any order that justice requires to
36 protect any party or other natural person or organization from unwarranted
37 annoyance, embarrassment, or oppression, or undue burden and expense. This
38 protective order may include, but is not limited to, one or more of the following
39 directions:

40
41 (1) That the set of interrogatories, or particular interrogatories in the set, need not
42 be answered.

1 (2) That, contrary to the representations made in a declaration submitted under
2 paragraph (3) of subdivision (c), the number of specially prepared interrogatories
3 is unwarranted.

4
5 (3) That the time specified in subdivision (h) to respond to the set of
6 interrogatories, or to particular interrogatories in the set, be extended.

7
8 (4) That the response be made only on specified terms and conditions.

9
10 (5) That the method of discovery be an oral deposition instead of interrogatories to
11 a party.

12
13 (6) That a trade secret or other confidential research, development, or commercial
14 information not be disclosed or be disclosed only in a certain way.

15
16 (7) That some or all of the answers to interrogatories be sealed and thereafter
17 opened only on order of the court.

18
19 If the motion for a protective order is denied in whole or in part, the court may
20 order that the party provide or permit the discovery against which protection was
21 sought on terms and conditions that are just.

22
23 The court shall impose a monetary sanction under Section 2023 against any party,
24 person, or attorney who unsuccessfully makes or opposes a motion for a protective
25 order or fails to oppose the motion, unless it finds that the one subject to the
26 sanction acted with substantial justification or that other circumstances made the
27 imposition of the sanction unjust.

28 **(f)–(j) * * ***

29 **(k)** If a party to whom interrogatories have been directed fails to serve a timely
30 response, that party waives any right to exercise the option to produce writings
31 under subdivision (f), as well as any objection to the interrogatories, including one
32 based on privilege or on the protection for work product under Section 2018.
33 However, the court, on motion, may relieve that party from this waiver on its
34 determination that (1) the party has subsequently served a response that is in
35 substantial compliance with subdivision (f), and (2) the party's failure to serve a
36 timely response was the result of mistake, inadvertence, or excusable neglect.

37
38 The party propounding the interrogatories may move for an order compelling
39 response to the interrogatories. The court shall impose a monetary sanction under
40 Section 2023 against any party, person, or attorney who unsuccessfully makes or
41 opposes a motion to compel a response to interrogatories or fails to oppose a
42 motion, unless it finds that the one subject to the sanction acted with substantial
43 justification or that other circumstances make the imposition of the sanction

1 unjust. If a party then fails to obey an order compelling answers, the court may
2 make those orders that are just, including the imposition of an issue sanction, an
3 evidence sanction, or a terminating sanction under Section 2023. In lieu of or in
4 addition to that sanction, the court may impose a monetary sanction under Section
5 2023.

6 **(l)** If the propounding party, on receipt of a response to interrogatories, deems that
7 (1) an answer to a particular interrogatory is evasive or incomplete, (2) an exercise
8 of the option to produce documents under paragraph (2) of subdivision (f) is
9 unwarranted or the required specification of those documents is inadequate, or (3)
10 an objection to an interrogatory is without merit or too general, that party may
11 move for an order compelling a further response. This motion shall be
12 accompanied by a declaration stating facts showing a reasonable and good faith
13 attempt at an informal resolution of each issue presented by the motion.
14

15 Unless notice of this motion is given within 45 days of the service of the response,
16 or any supplemental response, or on or before any specific later date to which the
17 propounding party and the responding party have agreed in writing, the
18 propounding party waives any right to compel a further response to the
19 interrogatories.
20

21 The court shall impose a monetary sanction under Section 2023 against any party,
22 person, or attorney who unsuccessfully makes or opposes a motion to compel a
23 further response to interrogatories or fails to oppose the motion, unless it finds that
24 the one subject to the sanction acted with substantial justification or that other
25 circumstances make the imposition of the sanction unjust.
26

27 If a party then fails to obey an order compelling further response to interrogatories,
28 the court may make those orders that are just, including the imposition of an issue
29 sanction, an evidence sanction, or a terminating sanction under Section 2023. In
30 lieu of or in addition to that sanction, the court may impose a monetary sanction
31 under Section 2023.

32 **(m)** Without leave of court, a party may serve an amended answer to any
33 interrogatory that contains information subsequently discovered, inadvertently
34 omitted, or mistakenly stated in the initial interrogatory. At the trial of the action,
35 the propounding party or any other party may use the initial answer under
36 subdivision (n), and the responding party may then use the amended answer.
37

38 The party who propounded an interrogatory to which an amended answer has been
39 served may move for an order that the initial answer to that interrogatory be
40 deemed binding on the responding party for the purpose of the pending action.
41 This motion shall be accompanied by a declaration stating facts showing a
42 reasonable and good faith attempt at an informal resolution of each issue presented
43 by the motion. The court shall grant this motion if it determines that (1) the initial

1 failure of the responding party to answer the interrogatory correctly has
2 substantially prejudiced the party who propounded the interrogatory, (2) the
3 responding party has failed to show substantial justification for the initial answer
4 to that interrogatory, and (3) the prejudice to the propounding party cannot be
5 cured either by a continuance to permit further discovery or by the use of the
6 initial answer under subdivision (n).

7
8 The court shall impose a monetary sanction under Section 2023 against any party,
9 person, or attorney who unsuccessfully makes or opposes a motion to deem
10 binding an initial answer to an interrogatory or fails to oppose the motion, unless it
11 finds that the one subject to the sanction acted with substantial justification or that
12 other circumstances make the imposition of the sanction unjust.

13 (n) * * *

14
15 **§ 2031.**

16 (a)–(e) * * *

17 (f) When an inspection of documents, tangible things or places has been
18 demanded, the party to whom the demand has been directed, and any other party
19 or affected person or organization, may promptly move for a protective order.
20 This motion shall be accompanied by a declaration stating facts showing a
21 reasonable and good faith attempt at an informal resolution of each issue presented
22 by the motion.

23
24 The court, for good cause shown, may make any order that justice requires to
25 protect any party or other natural person or organization from unwarranted
26 annoyance, embarrassment, or oppression, or undue burden and expense. This
27 protective order may include, but is not limited to, one or more of the following
28 directions:

29
30 (1) That all or some of the items or categories of items in the inspection demand
31 need not be produced or made available at all.

32
33 (2) That the time specified in subdivision (i) to respond to the set of inspection
34 demands, or to a particular item or category in the set, be extended.

35
36 (3) That the place of production be other than that specified in the inspection
37 demand.

38
39 (4) That the inspection be made only on specified terms and conditions.

40
41 (5) That a trade secret or other confidential research, development, or commercial
42 information not be disclosed, or be disclosed only to specified persons or only in a
43 specified way.

(6) That the items produced be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the party to whom the demand was directed provide or permit the discovery against which protection was sought on terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order or fails to oppose the motion, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(g)–(k) * * *

(l) If a party to whom an inspection demand has been directed fails to serve a timely response to it, that party waives any objection to the demand, including one based on privilege or on the protection for work product under Section 2018. However, the court, on motion, may relieve that party from this waiver on its determination that (1) the party has subsequently served a response that is in substantial compliance with subdivision (g), and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The party making the demand may move for an order compelling response to the inspection demand. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to an inspection demand or fails to oppose the motion, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

(m) If the party demanding an inspection, on receipt of a response to an inspection demand, deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general, that party may move for an order compelling further response to the demand. This motion (A) shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by it.

1
2 Unless notice of this motion is given within 45 days of the service of the response,
3 or any supplemental response, or on or before any specific later date to which the
4 demanding party and the responding party have agreed in writing, the demanding
5 party waives any right to compel a further response to the inspection demand.
6

7 The court shall impose a monetary sanction under Section 2023 against any party,
8 person, or attorney who unsuccessfully makes or opposes a motion to compel
9 further response to an inspection demand or fails to oppose the motion, unless it
10 finds that the one subject to the sanction acted with substantial justification or that
11 other circumstances make the imposition of the sanction unjust.
12

13 If a party fails to obey an order compelling further response, the court may make
14 those orders that are just, including the imposition of an issue sanction, an
15 evidence sanction, or a terminating sanction under Section 2023. In lieu of or in
16 addition to that sanction, the court may impose a monetary sanction under Section
17 2023.

18 **(n)** If a party filing a response to a demand for inspection under subdivision (g)
19 thereafter fails to permit the inspection in accordance with that party's statement of
20 compliance, the party demanding the inspection may move for an order
21 compelling compliance.
22

23 The court shall impose a monetary sanction under Section 2023 against any party,
24 person, or attorney who unsuccessfully makes or opposes a motion to compel
25 compliance with an inspection demand or fails to oppose the motion, unless it
26 finds that the one subject to the sanction acted with substantial justification or that
27 other circumstances make the imposition of the sanction unjust.
28

29 If a party then fails to obey an order compelling inspection, the court may make
30 those orders that are just, including the imposition of an issue sanction, an
31 evidence sanction, or a terminating sanction under Section 2023. In lieu of or in
32 addition to that sanction, the court may impose a monetary sanction under Section
33 2023.
34

35 **§ 2032.**

36 **(a)–(b) * * ***

37 **(c)** (1) As used in this subdivision, plaintiff includes a cross-complainant, and
38 defendant includes a cross-defendant.
39

40 (2) In any case in which a plaintiff is seeking recovery for personal injuries, any
41 defendant may demand one physical examination of the plaintiff, provided the
42 examination does not include any diagnostic test or procedure that is painful,
43 protracted, or intrusive, and is conducted at a location within 75 miles of the

1 residence of the examinee. A defendant may make this demand without leave of
2 court after that defendant has been served or has appeared in the action, whichever
3 occurs first. This demand shall specify the time, place, manner, conditions, scope,
4 and nature of the examination, as well as the identity and the specialty, if any, of
5 the physician who will perform the examination.

6
7 (3) A physical examination demanded under this subdivision shall be scheduled
8 for a date that is at least 30 days after service of the demand for it unless on
9 motion of the party demanding the examination the court has shortened this time.

10
11 (4) The defendant shall serve a copy of the demand for this physical examination
12 on the plaintiff and on all other parties who have appeared in the action.

13
14 (5) The plaintiff to whom this demand for a physical examination has been
15 directed shall respond to the demand by a written statement that the examinee will
16 comply with the demand as stated, will comply with the demand as specifically
17 modified by the plaintiff, or will refuse, for reasons specified in the response, to
18 submit to the demanded physical examination. Within 20 days after service of the
19 demand the plaintiff to whom the demand is directed shall serve the original of the
20 response to it on the defendant making the demand, and a copy of the response on
21 all other parties who have appeared in the action, unless on motion of the
22 defendant making the demand the court has shortened the time for response, or
23 unless on motion of the plaintiff to whom the demand has been directed, the court
24 has extended the time for response.

25
26 (6) If a plaintiff to whom this demand for a physical examination has been directed
27 fails to serve a timely response to it, that plaintiff waives any objection to the
28 demand. However, the court, on motion, may relieve that plaintiff from this
29 waiver on its determination that (A) the plaintiff has subsequently served a
30 response that is in substantial compliance with paragraph (5), and (B) the
31 plaintiff's failure to serve a timely response was the result of mistake,
32 inadvertence, or excusable neglect.

33
34 The defendant may move for an order compelling response and compliance with a
35 demand for a physical examination. The court shall impose a monetary sanction
36 under Section 2023 against any party, person, or attorney who unsuccessfully
37 makes or opposes a motion to compel response and compliance with a demand for
38 a physical examination or fails to oppose the motion, unless it finds that the one
39 subject to the sanction acted with substantial justification or that other
40 circumstances make the imposition of the sanction unjust.

41
42 If a plaintiff then fails to obey the order compelling response and compliance, the
43 court may make those orders that are just, including the imposition of an issue

1 sanction, an evidence sanction, or a terminating sanction under Section 2023. In
2 lieu of or in addition to that sanction the court may impose a monetary sanction
3 under Section 2023.

4
5 (7) If a defendant who has demanded a physical examination under this
6 subdivision, on receipt of the plaintiff's response to that demand, deems that any
7 modification of the demand, or any refusal to submit to the physical examination
8 is unwarranted, that defendant may move for an order compelling compliance with
9 the demand. This motion shall be accompanied by a declaration stating facts
10 showing a reasonable and good faith attempt at an informal resolution of each
11 issue presented by the motion.

12
13 The court shall impose a monetary sanction under Section 2023 against any party,
14 person, or attorney who unsuccessfully makes or opposes a motion to compel
15 compliance with a demand for a physical examination or fails to oppose the
16 motion, unless it finds that the one subject to the sanction acted with substantial
17 justification or that other circumstances make the imposition of the sanction
18 unjust.

19
20 (8) The demand for a physical examination and the response to it shall not be filed
21 with the court. The defendant shall retain both the original of the demand, with
22 the original proof of service affixed to it, and the original response until six
23 months after final disposition of the action. At that time, the original may be
24 destroyed, unless the court, on motion of any party and for good cause shown,
25 orders that the originals be preserved for a longer period.

26 **(d)–(f) * * ***

27 **(g)(1)** The attorney for the examinee or for a party producing the examinee, or that
28 attorney's representative, shall be permitted to attend and observe any physical
29 examination conducted for discovery purposes, and to record steno graphically or
30 by audiotape any words spoken to or by the examinee during any phase of the
31 examination. This observer may monitor the examination, but shall not participate
32 in or disrupt it. If an attorney's representative is to serve as the observer, the
33 representative shall be authorized to so act by a writing subscribed by the attorney,
34 which identifies the representative.

35
36 If in the judgment of the observer the examiner becomes abusive to the examinee
37 or undertakes to engage in unauthorized diagnostic tests and procedures, the
38 observer may suspend it to enable the party being examined or producing the
39 examinee to make a motion for a protective order. If the observer begins to
40 participate in or disrupt the examination, the person conducting the physical
41 examination may suspend the examination to enable the party at whose instance it
42 is being conducted to move for a protective order.

1 The court shall impose a monetary sanction under Section 2023 against any party,
2 person, or attorney who unsuccessfully makes or opposes a motion for a protective
3 order or fails to oppose the motion, unless it finds that the one subject to the
4 sanction acted with substantial justification or that other circumstances make the
5 imposition of the sanction unjust.

6
7 If the examinee submits or authorizes access to X-rays or any area of his or her
8 body for inspection by the examining physician, no additional X-rays of that area
9 may be taken by the examining physical except with consent of the examinee or
10 on order of the court for good cause shown.

11 (2) * * *

12 (h) If a party submits to, or produces another for, a physical or mental examination
13 in compliance with a demand under subdivision (c), an order of court under
14 subdivision (d), or an agreement under subdivision (e), that party has the option of
15 making a written demand that the party at whose instance the examination was
16 made deliver to the demanding party (1) a copy of a detailed written report setting
17 out the history, examinations, findings, including the results of all tests made,
18 diagnoses, prognoses, and conclusions of the examiner, and (2) a copy of reports
19 of all earlier examinations of the same condition of the examinee made by that or
20 any other examiner. If this option is exercised, a copy of these reports shall be
21 delivered within 30 days after service of the demand, or within 15 days of
22 trial, whichever is earlier. The protection for work product under Section 2018 is
23 waived, both for the examiner's writings and reports and to the taking of the
24 examiner's testimony.

25
26 If the party at whose instance the examination was made fails to make a timely
27 delivery of the reports demanded, the demanding party may move for an order
28 compelling their delivery. This motion shall be accompanied by a declaration
29 stating facts showing a reasonable and good faith attempt at an informal resolution
30 of any issue presented by the motion.

31
32 The court shall impose a monetary sanction under Section 2023 against any party,
33 person, or attorney who unsuccessfully makes or opposes a motion to compel
34 delivery of medical reports or fails to oppose the motion, unless it finds that the
35 one subject to the sanction acted with substantial justification or that other
36 circumstances make the imposition of the sanction unjust.

37
38 If a party then fails to obey an order compelling delivery of demanded medical
39 reports, the court may make those orders that are just, including the imposition of
40 an issue sanction, an evidence sanction, or a terminating sanction under Section
41 2023. In lieu of or in addition to those sanctions, the court may impose a
42 monetary sanction under Section 2023. The court shall exclude at trial the
43 testimony of any examiner whose report has not been provided by a party.

1 (i) * * *

2 (j) A party receiving a demand for a report under subdivision (h) is entitled at the
3 time of compliance to receive in exchange a copy of any existing written report of
4 any examination of the same condition by any other physician, psychologist, or
5 licensed health care practitioner. In addition, that party is entitled to receive
6 promptly any later report of any previous or subsequent examination of the same
7 condition, by any physician, psychologist, or licensed health care practitioner.
8

9 If a party who has demanded and received delivery of medical reports under
10 subdivision (h) fails to deliver existing or later reports of previous or subsequent
11 examinations, a party who has complied with subdivision (h) may move for an
12 order compelling delivery of medical reports. This motion shall be accompanied
13 by a declaration stating facts showing a reasonable and good faith attempt at an
14 informal resolution of each issue presented by the motion.
15

16 The court shall impose a monetary sanction under Section 2023 against any party,
17 person, or attorney who unsuccessfully makes or opposes a motion to compel
18 delivery of medical reports or fails to oppose a motion, unless it finds that the one
19 subject to the sanction acted with substantial justification or that other
20 circumstances make the imposition of the sanction unjust.
21

22 If a party then fails to obey an order compelling delivery of medical reports, the
23 court may make those orders that are just, including the imposition of an issue
24 sanction, an evidence sanction, or a terminating sanction under Section 2023. In
25 lieu of or in addition to the sanction, the court may impose a monetary sanction
26 under Section 2023. The court shall exclude at trial the testimony of any health
27 care practitioner whose report has not been provided by a party ordered to do so
28 by the court.

29 (k) * * *

30
31 **§ 2033.**

32 (a)–(d) * * *

33 (e) When requests for admission have been made, the responding party may
34 promptly move for a protective order. This motion shall be accompanied by a
35 declaration stating facts showing a reasonable and good faith attempt at an
36 informal resolution of each issue presented by the motion.
37

38 The court, for good cause shown, may make any order that justice requires to
39 protect any party from unwarranted annoyance, embarrassment, oppression, or
40 undue burden and expense. This protective order may include, but is not limited
41 to, one or more of the following directions:
42

1 (1) That the set of admission requests, or particular requests in the set, need not be
2 answered at all.

3
4 (2) That, contrary to the representations made in a declaration submitted under
5 paragraph (3) of subdivision (c), the number of admission requests is unwarranted.

6
7 (3) That the time specified in subdivision (h) to respond to the set of admission
8 requests, or to particular requests in the set, be extended.

9
10 (4) That a trade secret or other confidential research, development, or commercial
11 information not be admitted or be admitted only in a certain way.

12
13 (5) That some or all of the answers to requests for admission be sealed and
14 thereafter opened only on order of the court.

15
16 If the motion for a protective order is denied in whole or in part, the court may
17 order that the responding party provide or permit the discovery against which
18 protection was sought on terms and conditions that are just.

19
20 The court shall impose a monetary sanction under Section 2023 against any party,
21 person, or attorney who unsuccessfully makes or opposes a motion for a protective
22 order or fails to oppose the motion, unless it finds that the one subject to the
23 sanction acted with substantial justification or that other circumstances make the
24 imposition of the sanction unjust.

25 **(f)–(k) * * ***

26 **(l)** If the party requesting admissions, on receipt of a response to the requests,
27 deems that (1) an answer to a particular request is evasive or incomplete, or (2) an
28 objection to a particular request is without merit or too general, that party may
29 move for an order compelling a further response. The motion shall be
30 accompanied by a declaration stating facts showing a reasonable and good faith
31 attempt at an informal resolution of each issue presented by the motion.

32
33 Unless notice of this motion is given within 45 days of the service of the response,
34 or any supplemental response, or any specific later date to which the requesting
35 party and the responding party have agreed in writing, the requesting party waives
36 any right to compel further response to the request for admission.

37
38 The court shall impose a monetary sanction under Section 2023 against any party,
39 person, or attorney who unsuccessfully makes or opposes a motion to compel
40 further response or fails to oppose the motion, unless it finds that the one subject
41 to the sanction acted with substantial justification or that other circumstances
42 make the imposition of the sanction unjust.

1 If a party then fails to obey an order compelling further response to requests for
2 admission, the court may order that the matters involved in the requests be deemed
3 admitted. In lieu of or in addition to this order, the court may impose a monetary
4 sanction under Section 2023.

5 (m)–(o) * * *

6
7 **§ 2034.**

8 (a)–(d) * * *

9 (e) A party who has been served with a demand to exchange information
10 concerning expert trial witnesses may promptly move for a protective order. This
11 motion shall be accompanied by a declaration stating facts showing a reasonable
12 and good faith attempt at an informal resolution of each issue presented by the
13 motion.

14
15 The court, for good cause shown, may make any order that justice requires to
16 protect any party from unwarranted annoyance, embarrassment, oppression, or
17 undue burden and expense. The protective order may include, but is not limited
18 to, one or more of the following directions:

19
20 (1) That the demand be quashed because it was not timely served.

21
22 (2) That the date of exchange be earlier or later than that specified in the demand.

23
24 (3) That the exchange be made only on specified terms and conditions.

25
26 (4) That the production and exchange of any reports and writings of experts be
27 made at a different place or at a different time than specified in the demand.

28
29 (5) That some or all of the parties be divided into sides on the basis of their
30 identity of interest in the issues in the action, and that the designation of any
31 experts as described in paragraph (2) of subdivision (a) be made by any side so
32 created.

33
34 (6) That a party or a side reduce the list of employed or retained experts
35 designated by that party or side under paragraph (2) of subdivision (a).

36
37 If the motion for a protective order is denied in whole or in part, the court may
38 order that the parties against whom the motion is brought, provide or permit the
39 discovery against which the protection was sought on those terms and conditions
40 that are just.

41
42 The court shall impose a monetary sanction under Section 2023 against any party,
43 person, or attorney who unsuccessfully makes or opposes a motion for a protective

1 order or fails to oppose the motion, unless it finds that the one subject to the
2 sanction acted with substantial justification or that other circumstances make the
3 imposition of the sanction unjust.

4 **(f)–(h) * * ***

5 **(i)** On receipt of an expert witness list from a party, any other party may take the
6 deposition of any person on the list. The procedures for taking oral and written
7 depositions set forth in Sections 2025, 2026, 2027, and 2028 apply to a deposition
8 of a listed trial expert witness except as follows:

9
10 **(1)–(3) * * ***

11
12 **(4)** If a party desiring to take the deposition of an expert witness under this
13 subdivision deems that the hourly or daily fee of that expert for providing
14 deposition testimony is unreasonable, that party may move for an order setting the
15 compensation of that expert.

16
17 This motion shall be accompanied by a declaration stating facts showing a
18 reasonable and good faith attempt at an informal resolution of each issue presented
19 by the motion. Notice of this motion shall also be given to the expert. In any such
20 attempt at an informal resolution, either the party or the expert shall provide the
21 other with (A) proof of the ordinary and customary fee actually charged and
22 received by that expert for similar services provided outside the subject litigation,
23 (B) the total number of times the presently demanded fee has ever been charged
24 and received by that expert, and (C) the frequency and regularity with which the
25 presently demanded fee has been charged and received by that expert within the
26 two-year period preceding the hearing on the motion.

27
28 In addition to any other facts or evidence, the expert or the party designating the
29 expert shall provide, and the court's determination as to the reasonableness of the
30 fee shall be based upon (A) proof of the ordinary and customary fee actually
31 charged and received by that expert for similar services provided outside the
32 subject litigation, (B) the total number of times the presently demanded fee has
33 ever been charged and received by that expert, and (C) the frequency and
34 regularity with which the presently demanded fee has been charged and received
35 by that expert within the two-year period preceding the hearing on the motion.
36 Provisions (B) and (C) shall apply to actions filed after January 1, 1994. The court
37 may also consider the ordinary and customary fees charged by similar
38 experts for similar services within the relevant community and any other factors
39 the court deems necessary or appropriate to make its determination.

40
41 Upon a determination that the fee demanded by that expert is unreasonable, and
42 based upon the evidence and factors considered, the court shall set the fee of the
43 expert providing testimony.

1
2 The court shall impose a monetary sanction under Section 2023 against any party,
3 person, or attorney who unsuccessfully makes or opposes a motion to set the
4 expert witness fee or fails to oppose the motion, unless it finds that the one subject
5 to the sanction acted with substantial justification or that other circumstances
6 make the imposition of the sanction unjust.

7 **(j) * * ***

8 **(k)** On motion of any party who has engaged in a timely exchange of expert
9 witness information, the court may grant leave to (1) augment that party's expert
10 witness list and declaration by adding the name and address of any expert witness
11 whom that party has subsequently retained, or (2) amend that party's expert
12 witness declaration with respect to the general substance of the testimony that an
13 expert previously designated is expected to give. This motion shall be made
14 at a sufficient time in advance of the time limit for the completion of discovery
15 under Section 2024 to permit the deposition of any expert to whom the motion
16 relates to be taken within that time limit. However, under exceptional
17 circumstances, the court may permit the motion to be made at a later time. This
18 motion shall be accompanied by a declaration stating facts showing a reasonable
19 and good faith attempt at an informal resolution of each issue presented by the
20 motion. The demand, and all expert witness lists and declarations exchanged in
21 response to it, shall be lodged with the court when their contents become relevant
22 to an issue in any pending matter in the action. The court shall grant leave to
23 augment or amend an expert witness list or declaration only after taking into
24 account the extent to which the opposing party has relied on the list of expert
25 witnesses, and after determining that any party opposing the motion will not be
26 prejudiced in maintaining that party's action or defense on the merits, and that the
27 moving party either (1) would not in the exercise of reasonable diligence have
28 determined to call that expert witness or have decided to offer the different or
29 additional testimony of that expert witness, or (2) failed to determine to call
30 that expert witness, or to offer the different or additional testimony of that expert
31 witness as a result of mistake, inadvertence, surprise, or excusable neglect,
32 provided that the moving party (1) has sought leave to augment or amend
33 promptly after deciding to call the expert witness or to offer the different or
34 additional testimony, and (2) has promptly thereafter served a copy of the
35 proposed expert witness information concerning the expert or the testimony
36 described in subdivision (f) on all other parties who have appeared in the action.
37 Leave shall be conditioned on the moving party making the expert available
38 immediately for a deposition under subdivision (i), and on such other terms as may
39 be just, including, but not limited to, leave to any party opposing the motion to
40 designate additional expert witnesses or to elicit additional opinions from those
41 previously designated, a continuance of the trial for a reasonable period of time,
42 and the awarding of costs and litigation expenses to any party opposing the
43 motion.

1
2 The court shall impose a monetary sanction under Section 2023 against any party,
3 person, or attorney who unsuccessfully makes or opposes a motion to augment or
4 amend expert witness information or fails to oppose the motion, unless it finds that
5 the one subject to the sanction acted with substantial justification or that other
6 circumstances made the imposition of the sanction unjust.

7 (l) On motion of any party who has failed to submit expert witness information on
8 the date specified in a demand for that exchange, the court may grant leave to
9 submit that information on a later date. This motion shall be made a sufficient
10 time in advance of the time limit for the completion of discovery under Section
11 2024 to permit the deposition of any expert to whom the motion relates to be taken
12 within that time limit. However, under exceptional circumstances, the court may
13 permit the motion to be made at a later time. This motion shall be accompanied
14 by a declaration stating facts showing a reasonable and good faith attempt at an
15 informal resolution of each issue presented by the motion.
16

17 The court shall grant leave to submit tardy expert witness information only after
18 taking into account the extent to which the opposing party has relied on the
19 absence of a list of expert witnesses, and determining that any party opposing the
20 motion will not be prejudiced in maintaining that party's action or defense on the
21 merits, and that the moving party (1) failed to submit that information as the result
22 of mistake, inadvertence, surprise, or excusable neglect, (2) sought that leave
23 promptly after learning of the mistake, inadvertence, surprise, or excusable
24 neglect, and (3) has promptly thereafter served a copy of the proposed expert
25 witness information described in subdivision (f) on all other parties who have
26 appeared in the action. This order shall be conditioned on the moving party
27 making that expert available immediately for a deposition under subdivision (i),
28 and on such other terms as may be just, including, but not limited to, leave to any
29 party opposing the motion to designate additional expert witnesses or to elicit
30 additional opinions from those previously designated, a continuance of the trial for
31 a reasonable period of time, and the awarding of costs and litigation expenses to
32 any party opposing the motion.
33

34 The court shall impose a monetary sanction under Section 2023 against any party,
35 person, or attorney who unsuccessfully makes or opposes a motion to submit tardy
36 expert witness information or fails to oppose the motion, unless it finds that the
37 one subject to the sanction acted with substantial justification or that other
38 circumstances make the imposition of the sanction unjust.

39 (m)–(n) * * *